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JAMES H. McKENNEY

IN THE

SUPREME COURT OF THE UNITED STATES.

WARREN B. WILSON,
Appellant,
vs.
LESLIE M. SHAW, Secretary of the Treasury; THE REPUBLIC OF PANAMA; THE NEW PANAMA CANAL COMPANY OF FRANCE,
Appellees.

No. 43.

Appeal from the Court of Appeals of the District of Columbia.

Appellant's Supplemental Brief.

WARREN B. WILSON,
SOLICITOR *pro se.*

BARNARD & MILLER, PRINTERS, CHICAGO

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The purpose of filing the present paper is to correct an error in the brief already filed, the paging of the record in which the different parts of the bill are found having been by mistake omitted. Also to cite a few additional authorities.

This case is made by a bill filed in the Supreme Court of the District of Columbia by appellant, a citizen, and taxable inhabitant, praying an injunction to restrain the appellee, Leslie M. Shaw, secretary of the treasury, from paying any money out of the treasury in the purchase of property or in the construction of the canal at Panama and from borrowing money on the credit of the United States or issuing bonds or making any pay-

ments under the assumed authority of the act of Congress approved June 28, 1902, for the acquirement of property rights from Colombia and the Canal Company and for the construction and operation of the canal and railroad.

The bill avers:

1. That the complainant is a citizen of Illinois and of the United States, the owner of property in the United States subject to taxation by the United States and a taxable inhabitant of the United States. (Rec., page 1-2.)

2. That the defendant is Secretary of the Treasury and as such has the custody and control of over $60,000,000 public money derived from taxes, money borrowed and proceeds of the disposition of the territory and other property of the United States. (Rec., page 2.)

3. That no treaty has been made with Colombia. (Rec., page 2.)

4. That the people on the Isthmus rebelled and established an independent republican government with which the treaty set out in the bill *in haec verba* was made. (Rec., page 3.)

That Panama is a republic, its government republican in form; that the persons representing Panama in making the treaty had the same power to act for and bind Panama by treaty that the President and Senate have to act for and bind the United States. (Rec., page 11.)

"That the legal effect in the territory of the Republic of Panama of this or any treaty executed by the said representatives of Panama is the same as

the legal effect in the territory of the United States of a treaty in like terms made on behalf of the United States by the President and Senate." (Rec., page 11.)

That no treaty has been made with Colombia and the things required by the act to be acquired from Colombia have not been acquired at all except such as are claimed to have been acquired by the treaty with Panama; that the entire Isthmus is outside the territory of the United States. (Rec., page 11.)

5. That a contract has been made with the Canal Company for acquiring their property and rights at $40,000,000. (Rec., page 11.)

That the President is about to issue his warrants as provided by the act for the ten and forty million dollars to Panama and the Canal Company, respectively; that large expenses are being incurred in construction of the canal; that the defendant is publicly giving out that he will pay the ten and forty million and construction expenses and unless restrained will pay out said sums and the full ten million the act purports to appropriate for construction and will borrow $130,000,000 and issue bonds therefor; that the expense of construction will be more than ten million and the full amount of one hundred and thirty million the act purports to authorize to be borrowed. (Rec., page 12.)

7. That there is no appropriation by law for any such payments or authority for bond issues except that claimed under act of June 28, 1900. (Rec., page 13.)

8. That said act is wholly unauthorized by the

Constitution, null and void; that the treaty is wholly unconstitutional and invalid, both in Panama and the United States; that if the act were valid its terms and conditions have not been complied with and if any such payments are made it will be in violation of the provision of the Constitution, that no money shall be drawn from the treasury but in consequence of appropriations made by law. (Rec., page 13.)

That the Secretary of the Treasury is giving out that said act is a valid act and gives authority for such payments and bond issues and unless restrained will make them; that the Secretary of the Treasury is not a person of sufficient substance to make good said sums or any considerable part thereof, and if said payments or any of them are made the amounts of such payments will be wholly lost. (Rec., page 14.)

That the President fully approves the course of the Secretary of the Treasury, and any application for leave to prosecute in the name of the United States this or any suit asking like relief would be unavailing. (Rec., page 15.)

Prays an injunction against making any payments for purchase or construction or under the assumed authority of the act of June 28, 1902, and against borrowing money or issuing bonds. (Rec., pages 15 and 16.)

The transcript of the record shows more fully the averments of the bill.

To this bill a demurrer was filed by the Secretary of the Treasury (Rec., p. 17):

1. For want of equity.

2. That the defendant is sued as an officer of the United States and not as an individual.

3. The complainant has no interest in the matter.

4. That Panama is a foreign nation and cannot be sued.

5. That the United States has an interest in the matter, but is not and can not be made a party.

The questions involved are (Rec., p. 17):

1. Whether the act of June 28, 1902, or any other legislation properly construed purports to authorize the payments of bond issues or the construction or operation of the canal.

2. Whether if it does intend to authorize these things the legislation is constitutional.

3. Whether the complainant has the necessary special interest in the question to enable him to maintain the bill.

4. Whether the United States is a party or if not whether it has such an interest in the question that the suit can not be prosecuted without making it a party.

The questions are raised by the demurrer of the Secretary of the Treasury to the bill and by the ruling of the Supreme Court of the District of Columbia sustaining the demurrer and dismissing the bill for want of equity. (Rec., p. 18.) The decree was affirmed by the Court of Appeals. (Rec., p. 24.)

The last named rulings and the judgment of the

Court of Appeals of the District of Columbia affirming the decree below are the errors assigned and relied on. (Rec., p. 19.)

The reference on page 6 of the brief to the averment that the President fully approves the course of the Secretary of the Treasury in the matters complained of, issuing his warrants, &c., and any application for leave to prosecute in the name of the United States, this or any suit seeking similar relief would be unavailing as to record pages 14 and 15.

The reference on page 53, "That the legal effect in the territory of the Republic of Panama of this or any treaty executed by the said Republic of Panama is the same as the legal effect in the territory of the United States of a treaty in like terms made on behalf of the United States by the President, the Senate," is to record page 11.

The reference on page 133 of the brief to the averment that the funds for which the appropriations in question are to be made is made up not merely of the proceeds of taxation but of the proceeds of the sale of public land, money borrowed and money derived from all other sources, is to record page 2.

It is also desired to cite the following additional authorities: To the general right of appellant to maintain the bill, assuming the main question is solved in accordance with his contention; that such a suit as the present is not a suit against the United States.

Smyth v. *Ames,* 169th U. S., 466.

That a railroad is not a public highway.

Pennsylvania R. R. Co. v. *Donovan,* 199th U. S., 279, and cases there cited.

A highway or public road only as any other property employed by its owner in a business affected with a public interest is public property.

Munn v. *Illinois*, 94 U. S., 113.
Budd v. *New York*, 143 U. S., 517.
Brass v. *Stoesel*, 153 U. S., 391.

That the fact that Eminent Domain laws are employed in the construction of any road or the industrial plant of any corporation is not sufficient to establish that a road is a public highway or the plant a public plant, but only that the industry in question is of such nature that it is of such general interest that it should be established that property condemned to enable its plant to be installed is taken for a public use.

Clark v. *Nash*, 198 U. S., 361.
Strickly v. *Highland Boy Mining Co.*, 200 U. S., 527.

Since the original brief was filed in this case, the case of South Carolina against the United States, 199th U. S., page 437, has been decided, and is submitted as decisive of the question whether Congress has authority in the territories (even if this strip were supposed to be a part of the territory of the United States) to build and operate railroads or to conduct the carrying trade or any other private business affected with the public interest in the territories.

In Munn against Illinois, and other cases cited above, the same rule as to the public nature of the employments described in those cases was announced which applies to the carrying trade. The substance

of the decision in the South Carolina case is that the general grant of governing power made to the several states does not include the power to carry on any kind of commerce, even the kind affected in the largest degree with the public interest. That while a state might through constitutional conventions or other original acts of the people or judicial legislation extend its functions into fields that were not in 1789 recognized as legitimately belonging to Government and that such extensions did not necessarily destroy the republican character of its government and make it subject to correction under the Constitution of the United States. Yet these fields were not understood when the Constitution was adopted to be a part of the legitimate territory of government, and the state, if it does make such departures from its legitimate paths, may be taxed by the Federal Government and treated in all respects as any other trader; but the authority of Congress in the territories is the general governing power, that is the authority of Congress, and the authority of the state as that authority was understood when the grant was made, as the terms would have been understood when the Constitution was adopted and that grant of power to govern the territories was made.

Respectfully submitted,

WARREN B. WILSON,
Pro Se.